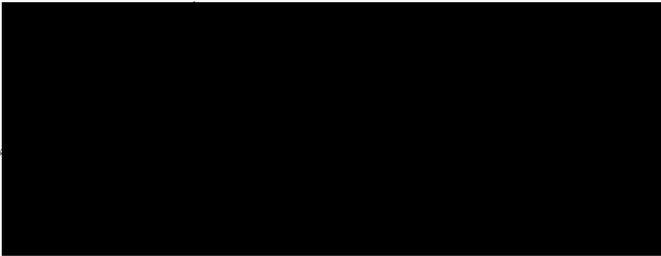


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

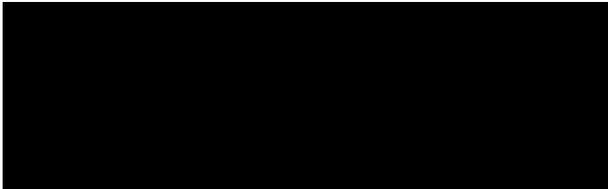


FILE: WAC 02 150 50034 Office: CALIFORNIA SERVICE CENTER Date: **APR 20 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

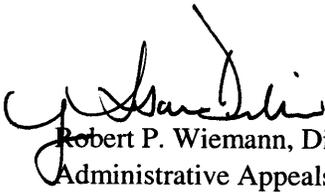


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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an engineering and architectural firm that seeks to employ the beneficiary as an architectural designer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an architectural designer. In its response to the request for evidence, the petitioner indicated that a candidate must possess the equivalent of a bachelor's degree in architecture, and have at least five years of experience in commercial, healthcare, corporate, and institutional work, and be able to obtain licensure.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary did not possess proper licensure to practice as an architect, and had not signed the Professional Services Agreement. The director, furthermore, stated that the position does not meet any of the criteria for classification as a specialty occupation.

On appeal, counsel asserts that the beneficiary's intended duties are to "assist the principal head architect with conceptual design ideas in the development of construction documents for various company projects." Based on this job description, counsel states that the proper job title is "architectural drafter/design illustrator," and that licensure is therefore not required. Counsel, furthermore, states that the beneficiary holds a bachelor's degree in architecture and has two years of work experience as an architect/draftsman. Counsel states that the petition meets the requirement of a specialty occupation.

The record contains, in part, the following documents relating to the beneficiary: (1) a certificate from the Republic of the Philippines Eulogio "Amang" Rodriguez Institute of Science and Technology, Nagtahan, Sampaloc, Manila, which certifies that the beneficiary holds a bachelor of science degree in architecture; (2) a certificate of attendance in "Computer Aided Design and Drafting"; and (3) two employment verification letters.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

First, the AAO will address counsel's modification of the beneficiary's duties on appeal.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary in the initial petition is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made on appeal, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Consequently, the AAO will disregard counsel's job description and title on appeal.

Next, the AAO will consider whether the beneficiary is qualified to perform the proffered position – architectural designer.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary had not signed the Professional Services Agreement, and did not possess licensure to practice as an architect in California.

On appeal, counsel submits a Professional Services Agreement signed by the beneficiary and petitioner. The AAO finds that the agreement confirms an employer/employee relationship between the petitioner and beneficiary.

With respect to the question of whether a license is required for the proffered position, the AAO routinely consults the *Handbook* for a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. According to the 2004-2005 edition of the *Handbook*, all States and the District of Columbia require individuals to be licensed before they call themselves architects or contract to provide architectural services.

The *Handbook*, nevertheless, states that many architecture school graduates work in the field while they are in the process of becoming licensed; however, a licensed architect is required to take legal responsibility for all work.

In its November 12, 2002 letter, the petitioner claims that the beneficiary may perform the proffered position under the supervision of a licensed civil engineer, and the petitioner submits an extract of the California Business and Professions Code, a document entitled "Building Design Authority," and a copy of a registered civil engineer stamp. The AAO finds that this documentation establishes that a registered civil engineer may take full legal responsibility for the work of an unlicensed architectural designer.

The petitioner stated that a candidate must hold a bachelor's degree in architecture. However, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Although the beneficiary possesses a foreign degree, it has not been determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Because no evidence in the record equates the beneficiary's credentials to a United States baccalaureate or higher degree pursuant to the first four criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D), CIS must, therefore, determine an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5); three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and

practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Based upon the evidence in the record pertaining to the beneficiary and previously described, the AAO cannot determine whether this documentation establishes equivalence to a baccalaureate degree in architecture.

The AAO now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not seem to involve the theoretical and practical knowledge of architecture. One letter merely certifies the beneficiary's employment as a supervisor from December 1995 to November 1998. Although the second letter states that for two years the beneficiary had prepared working drawings, renderings, and perspectives, neither of the letters specifically describes the beneficiary's daily activities or his level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is architecture. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise.

Although the denial letter stated that the proffered position "does not meet any of the preceding criteria for classification as a specialty occupation," the AAO finds this comment offhand given that no preceding criteria for classifying the position as a specialty occupation were set forth.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

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As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.